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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/227,687	01/08/1999	FRANCIS P. TALLY	CPI98-03P9MA	7885

34103 7590 09/24/2003

CUBIST PHARMACEUTICALS, INC.  
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LEXINGTON, MA 02421

[REDACTED] EXAMINER

LEFFERS JR, GERALD G

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

1636

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No.	Applicant(s)
	09/227,687	TALLY ET AL.
	Examiner Gerald G Leffers Jr., PhD	Art Unit 1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 18 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: "comprises a single gene product" 112 2<sup>nd</sup>, meant to specify "consisting of"?

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 67,68,70,72-76,78-85,87,89-91,93-98,100-112,114-120 and 122-131.

Claim(s) objected to: 71,77,88 and 92.

Claim(s) rejected: 69,86,99,113 and 121.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10.  Other: \_\_\_\_\_

***Advisory Action Attachment***

Continuation of 5. does NOT place the application in condition for allowance because:

Arguments drawn to amended claims are moot, the amendment hasn't been entered. The proposed corrections would obviate the 112 2<sup>nd</sup> issues raised in the Final office action. In particular, the proposed amendments to additional claims are appreciated (e.g. *in vivo* in the preamble and final step of claim 67). However, the proposed amendments would not obviate the issue where claims 71, 77, 88 & 92 fail to further limit the claims upon which they depend. Inserting the word "single" does not correct the situation because the claim language is open (i.e. "the protein target component *comprises*") and it is still unclear how the protein target component of the host cell could not have at least a single protein component (i.e. a gene product). The amendment does raise the question more strongly as to what is claimed, particularly in reference to embodiments where the target component of the cell is recited to comprise a complex of more than one gene product" (hence the 112 2<sup>nd</sup> issue).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr., PhD whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Gerald G Leffers Jr., PhD  
Examiner  
Art Unit 1636

Ggl

*Gerald G. Leffers Jr.*  
GERRY LEFFERS  
PRIMARY EXAMINER